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May 28, 1993

Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

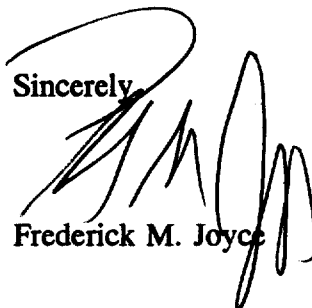
Re: **Celpage, Inc. Comments**
PR Docket No. 92-235

Dear Ms. Searcy:

Transmitted herewith, on behalf of Celpage, Inc., please find enclosed the original and five (5) copies of its Comments in the above-referenced Rulemaking proceedings.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,



Frederick M. Joyce

FMJ/jml
Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Replacement of Part 90 by Part 88
to Revise the Private Land Mobile
Radio Services and Modify the
Policies Governing Them

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PR Docket No. 92-235

To: The Commission

COMMENTS OF CELPAGE, INC.

Frederick M. Joyce
Jill M. Lyon
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: May 28, 1993

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SUMMARY

Celpage, Inc. is a licensee of Private Carrier Paging ("PCP") facilities throughout the Commonwealth of Puerto Rico and the continental United States. Celpage, Inc. supports many of the FCC's proposals as set forth in the proposed Part 88 of the Rules, including the Exclusive Use Overlay mechanism, the exemption of 33 paging frequencies from narrowbanding requirements and the consolidation of Private Land Mobile Radio services.

Due to PCP's unique needs, however, Celpage strongly urges the Commission to create a separate radio service for PCP. A simple, consistent set of rules such as those found in Part 90 has helped to foster PCP's tremendous growth, and is needed to continue that growth. As proposed, Part 88 does not explicitly define PCP services; the proposed part 88 rules coupled with other pending rulemaking proceedings would fracture PCP rules governing various portions of the PCP spectrum.

Celpage urges the Commission to adopt a uniform standard for PCP exclusivity and allow higher operating power/antenna height limits to encourage PCP competition with radio common carrier services. PCP industry growth and the likelihood of some form of exclusivity also warrant more paging-only channels.

its proposed definition of PLMR user eligibility, which appropriately appears to allow individual use of PLMR services.

Finally, Celpage strongly disagrees with the Commission proposal to open PLMR services to multiple frequency coordinators, and urges the FCC retain a single coordinator for each consolidated service, with NABER remaining as coordinator for PCP services. Celpage further urges the Commission to adopt clear standards in the Rules governing its decisions on frequency coordinator recommendations.

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To: The Commission

COMMENTS OF CELPAGE, INC.

Celpage, Inc., through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). Celpage supports some of the rule modifications recommended in the Notice, and has some suggestions for eliminating or modifying others, for the following reasons:

I. Statement of Interest.

Celpage holds many Private Land Mobile Radio Service ("PLMR") licenses: it is a licensee of Private Carrier Paging ("PCP") facilities on the 152.480 MHz frequency throughout the Commonwealth of Puerto Rico, and is the licensee of PCP facilities throughout the continental United States. Celpage has quickly grown to become one of the largest paging companies in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has previously been an interested party in

numerous FCC rulemaking proceedings pertaining to PCP and radio common carrier ("RCC") paging issues. Celpage most recently filed comments in the Commission's rulemaking proceeding concerning exclusivity for PCP licensees in the 929-930 MHz band, PR Docket No. 93-35.

The rule changes proposed in the FCC's Notice would have an immediate impact on Celpage's PCP business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of the proposed rule changes. Thus, Celpage has standing as a party in interest to file formal comments in this proceeding.

II. Summary of Notice

In its Notice, the FCC aptly recognizes the growing importance of PLMR services to a wide variety of users across the country, and the need for new rules to facilitate efficient use of the spectrum and to accommodate growth of new technologies. The Commission proposes to completely replace Part 90 of its Rules with a new Part 88: this will surely be a complex undertaking.

While endeavoring to simplify the PLMR Rules, the Notice also proposes to incorporate several major changes into PLMR regulation. Briefly put, they are as follows:

1. The Commission would consolidate the 19 current PLMR services into three: Non-Commercial, Public Safety and Specialized Mobile Radio ("SMR"); the latter service group would

include most current commercial licensees such as PCP operators. Each of these services would have a pool of frequencies assigned to it; a General Category Pool of additional frequencies would be available to all three services. Notice at ¶ 17.

One-way paging communications would be allotted 33 paging-only frequencies, to be included in the General Category Pool. See proposed § 88.1063(b). Paging licensees would also be eligible for other frequencies on a secondary basis (proposed § 88.1063(f)), or if authorized for an exclusive channel (proposed § 88.1063(d)).

2. The FCC's proposed rules would "split" current 25 or 20 kHz channels into narrowband channels of 6.25 or 5 kHz each, in frequency bands below 512 MHz. The transition to narrowband channels would be phased in over a number of years; still, licensees would be encouraged to apply for narrowband channels and convert to narrowband equipment as early as 1996. Current PCP channels, however, would remain at 25 kHz.

3. The FCC proposes new technical and operational standards for PLMR licensees. Among these, the Commission would restrict PCP power output to lower levels than are currently allowed under the Rules. See proposed § 88.1067. Power limits would be lower still where antenna heights are greater than 197 feet above average terrain. Proposed § 88.429.

4. The Commission plans to grant a form of exclusivity to licensees in the 150-174 and 450-470 Mhz frequency bands. Through a marketplace mechanism known as "exclusive use overlay"

("EUO"), after obtaining the consent of all other qualified co-channel licensees within 80 km (50 miles), licensees on particularly congested channels could request a limit on the number of licensees able to share a particular channel. Proposed §§ 88.179-88.191. To qualify for an EUO license, licensees would have to meet loading requirements based on their proximity to listed markets. Proposed § 88.187.

5. While planning to retain frequency coordination procedures, the FCC proposes to allow applicants for frequencies below 512 MHz to choose among several coordinators. For example, General Category applicants could use any coordinator now recognized by the Commission. Notice at ¶ 18. Above 800 MHz, responsibility for coordination would continue to rest with NABER and SIRSA. Id.

Celpage strongly supports many of these Commission proposals and objectives. In some instances, however, Celpage disagrees with the means by which the FCC seeks to promote the ends outlined in the Notice. Celpage also submits that some of the Notice's proposals are inconsistent with Commission proposals in other rulemaking proceedings. Finally, Celpage offers a few of its own proposals for achieving the Commission's laudatory goals of requiring spectrum efficiency and embracing the growth of new private radio technologies.

III. PCP Services Should Be in a Separate Category.

Celpage generally supports the Commission's proposal to

consolidate the 19 current PLMR services, thus pooling available frequencies for more efficient distribution. Nevertheless, in addition to the proposed Non-Commercial, Public Safety and SMR license groups, Celpage strongly urges the Commission to consider creating a fourth category of PCP licensees, with their own PCP rules. The FCC's Rules should recognize the unique characteristics and needs of PCP service providers, as well as the historic success of this industry. A separate PCP license category would also ensure consistent rules for all PCP operators regardless of frequency band.

A. Background

In the mere eleven years since the expansion of PCP service to the 900 MHz band,¹ PCP services have developed an extraordinary track record. PCP has delivered low-priced, high-quality services to hundreds of thousands of customers nationwide. Technology has improved dramatically, while service costs have decreased.

PCP has impressively furthered the Commission's goal of increased competition: states that were previously immune to competition due to local regulation are benefitting from the entry of competitive PCP services. Non-commercial users nationwide have gravitated to PCP as a low-cost, effective alternative to RCC paging services. The industry has grown exponentially, with licensees both large and small generally

¹ See First Report and Order, Gen. Docket No. 80-193, 89 FCC 2d 1337 (1982); Second Report and Order, Gen. Docket No. 80-193, 91 FCC 2d 1214 (1982).

making highly efficient use of shared frequencies. PCP has fulfilled the FCC's original objective of providing attractive services tailored to the unique needs of individual customers.

B. Part 90 Has Nurtured PCP's Growth.

The success of the service thus far has been assisted by a simple, consistent set of Rules that apply across the PCP spectrum in the 150, 450-470 and 929 MHz bands; this has created the "level playing field" necessary for industry growth. The FCC has continued to simplify the Rules pertaining to PCP over the years; an example is the Commission's elimination of the fifty-

more recent rulemaking proposals paradoxically stress the unique needs and characteristics of PCP services in ways that are sorely lacking in the Part 88 proposals.

Part 88 indirectly recognizes the success of PCP services by allotting 33 channels exclusively for paging, omitting those channels from the narrowbanding requirements that would be imposed on other services, and eliminating secondary two-way mobile use of paging frequencies so as to minimize potential interference. See proposed §§ 88.1061, 88.1063(b). However, in spite of providing separate, wideband channels, Part 88 inexplicably does not assign those channels to a separate PCP radio service. Because Part 88 does not provide separate status to PCP services, nowhere in Part 88 are PCP's unique needs and concerns adequately and completely addressed.

D. PCP's Needs Require a Separate Status in the Rules.

PCP has flourished with licensees sharing their channels, and channel sharing concerns will top the list of PCP concerns as the service continues to grow. Increased congestion on many frequencies poses the danger of increased harmful interference; thus, PCP licensees have a deep interest in channel loading and airtime availability issues. Some form of exclusivity is needed

Competition with RCC services and the growth of wide-area PCP systems mean that PCPs will have unique power and antenna height needs which must be met if they are to continue to grow. These concerns are addressed elsewhere in these comments, but have not been adequately addressed in the Notice. In short, PCP services have a variety of unique needs that require a consistent, but minimal body of rules and regulations; that could be accomplished most easily by establishing a separate service category for PCPs under proposed Part 88.

IV. PCPs Should be Allotted More Channels.

Celpage suggests that the Commission allot more channels to paging operations: with industry growth and the likelihood that some form of PCP exclusivity will be put into place, more channels will be needed.

Recent industry figures underscore the phenomenal growth of this industry. The top twenty PCP operators, as listed in an industry publication, provide service to nearly 609,500 pagers, using 1292 transmitters. See Radio Communications Report, April 19, 1993, p.10. Most of these operators provide service to a multi-state area. It is instructive to note that the operator ranked second in number of pagers was not even on the list in 1992. Id.

This phenomenal growth was accomplished with shared channels, and with user eligibility restrictions. With the prospect of channel exclusivity closing already-congested

channels, plus elimination of the restriction on individual service, the channels proposed in Part 88 (many of them already congested) may not adequately serve the needs of the PCP industry. Consequently, the FCC should consider allocating additional PCP channels.

V. Advanced Messaging Services

Celpage does not believe that narrowband, paging-only channels need to be designated for paging services at this time. See Notice at p. 28. Instead, Celpage suggests that a bloc of narrowband channels be set aside for Advanced Messaging Services

the Notice: the limited exclusivity afforded by EUO will promote investment in new technology, and, for PCPs, safeguards against harmful co-channel interference. This prospect of exclusivity, however, adds another wrinkle to PCP's vague status in the Notice. Under the EUO proposals, some of the paging-only channels listed in proposed § 88.1063 (those below 470 MHz) would be eligible for a form of exclusivity based on obtaining co-channel licensee concurrence to effectively close the channel to new entrants within a 50-mile radius. See proposed § 88.191(b). Nonetheless, paging-only channels in the 929 MHz band would not be eligible for EUO; they would instead fall under the entirely different PCP exclusivity proposals of PR Docket 93-35. Thus, there would be two distinct exclusivity standards for the PCP industry, based solely on frequency.²

If there are sound reasons for adopting two entirely different exclusivity procedures, the FCC's Notice certainly does not elucidate them. At best, these disparate rules are likely to cause confusion throughout the PCP industry. To minimize confusion for frequency coordinators, licensees and Commission staff, the Commission should consider adopting one consistent standard for exclusivity across the PCP spectrum. See Comments of Celpage, Inc., PR Docket No. 93-35, May 6, 1993.

² It should also be noted that neither proposal calls for "exclusivity" as enjoyed by RCC licensees, since under both proposals it is likely that PCP licensees will continue to share channels with some number of co-channel licensees.

VII. Operating Power and Antenna Height

Celpage strongly disagrees with the Commission's proposed restrictions on output power and antenna height. See proposed § 88.1067. If provisions for different bands are adopted as proposed, these power and antenna height restrictions would have a seriously detrimental effect on the industry's future.

These height and power proposals are inconsistent with current rules and other pending rulemaking proceedings affecting

DCR. Below 470 MHz, the Notice proposes that, pending rule-

high-powered operations for 900 MHz PCP operators, while denying or restricting these benefits to non-900 MHz PCP operators.

The Commission has apparently recognized that higher power limits allow licensees to construct fewer, more efficient transmitters to cover larger service areas. This reduces operating costs, allowing more investment in new technology and services. Higher power limits are especially vital for PCP operators competing against RCCs: they provide a level playing field of competition and encourage efficient local and regional services. For these reasons, Celpage urges the Commission to adopt a single set of height/power rules across the PCP spectrum, consistent with the higher limits proposed in PR Docket 93-35.

VIII. Telephone Interconnection

PCP operators increasingly compete directly against RCCs in providing paging services. Although the FCC regulates their radio services under different rules, both RCCs and PCPs require the identical form of telephone services to provide their customers an interconnected paging service. Unfortunately, for far too many PCPs, local telephone companies fail to recognize that PCPs as telephone customers are legally entitled to equal treatment with RCCs. Instead, PCPs are often subject to open and acknowledged discrimination in the form of higher interconnection rates and lower-quality services.

It is long overdue for the FCC to take affirmative action to end this discriminatory treatment of PCPs; the Part 88 rewrite

would be an appropriate mechanism for achieving this end. The Commission should include in the Part 88 PCP rules the requirement that PCPs be granted co-equal interconnect status with RCCs. The FCC has ample statutory authority to enact such a rule. See, e.g., 47 U.S.C. §§ 201(b), 202(a).

Such a Rule provision could eliminate the endless and expensive rate discrimination proceedings that have been brought and are still pending before state and local utility commissions, the FCC and the courts in an effort to obtain equal interconnect rates. Such a rule would also help state authorities, some of which are not entirely familiar with PCP operations, to understand that PCPs are entitled to equal interconnect rates and services under the Communications Act.

IX. User Eligibility

Celpage requests clarification on the issue of how proposed Part 88 will define user eligibility for private land mobile radio services. Traditionally, certain PLMR services have not been available for "personal use"; however, the Notice's proposed language defining the service appears to adopt an entirely new definition for user eligibility:

The Private Land Mobile Radio Services allow state and local governments, commercial and non-profit organizations to use the electromagnetic spectrum for mobile and ancillary fixed telecommunications to assure safety of life and property, and to improve productivity and efficiency.

Proposed § 88.11.

If commercial licensees such as PCP operators may offer

purpose "to assure safety of life and property" and to improve

coordinators for one radio service to the prospect of multiple, competing air traffic controllers at a single airport. The analogy paints a vivid picture of the chaos that would govern shared-frequency operations if such a proposal were adopted. Although the coordination system may have its flaws, the known prospect of an essentially regulated monopoly is much more palatable than the unknown prospect of "coordinator wars", which would be inevitable if coordinators are driven only by the incentive to procure the most coordination fees possible, regardless of congestion on a given shared frequency.

With regard to PCP services, no other coordinator has NABER's experience; the same is no doubt true of other coordinators with an expertise in one area of PLMR services. NABER's database contains a wealth of PCP data and history; any other coordinator seeking to work with PCP applications would have an immediate handicap in attempting to intelligently coordinate these operations. Given the large volume of PCP applications handled each month, multiple coordinators would be hard pressed to keep their databases current, which is vital to avoid conflicting recommendations. It is unlikely that efforts to share information, however well-intentioned, could be maintained at a fast enough pace to prevent real hardship to applicants. Moreover, the additional work of "coordinating the coordinators" would inevitably result in higher coordination fees, along with lower-quality service.

XI. Standards for Frequency Coordination.

To promote the goal of spectrum efficiency, Celpage requests that the Commission incorporate into its Rules explicit standards for approval of frequency coordinators' recommendations. PLMR applicants that are now required to use frequency coordination services, including PCP applicants, are placed at a disadvantage due to present uncertainties as to the FCC's likely decision on each recommendation, particularly when an informal protest has been filed against a coordinator's recommendation. Because there are no standards for whether recommendations will be approved, applicants may be reluctant to order station equipment or take other actions necessary to meet the eight-month construction deadline and begin providing service to the public. Moreover, legitimate disputes over the bona fides of a particular application to share a particular congested frequency have often remained unresolved because the FCC did not enforce a coordinator's recommendation. These problems will only be exacerbated as shared frequencies become increasingly congested. Coordination standards, and the resulting body of consistent precedents, would greatly improve this situation.

XII. The Commission Should Initiate a Separate PCP Rulemaking.

PCP is a rapidly-growing industry, with much untapped potential for service to the public. It is clear from recent FCC rulemaking proposals for PCP that the Commission recognizes its evolutionary nature: exclusivity, service to individuals,

reserved wideband channels in the new Part 88 are all proposals that will nurture PCP growth. Nevertheless, conflicting proposals in these pending rulemaking proceedings could create inconsistent rules for various portions of the PCP spectrum. As stated above, different rules and standards based solely on a PCP's frequency could disrupt the growth trend of the PCP industry. Inevitably, some PCP channels would be considered "prime", others inferior. That disparity will ripple through every aspect of PCP operations: from financing and frequency coordination, to equipment costs, interference avoidance and every other aspect of operating a PCP station. The regulatory implications for this agency, as it attempts to sort out the inevitable disputes that will be governed by disparate rules, are also unfavorable.

Rather than proceeding toward such inevitable consequences, Celpage recommends that the FCC remove this Notice's PCP proposals and place them in a separate docket, which would be on a faster track to coincide with the other pending PCP rulemaking proceedings. All proposed rules that will impact PCP services should be examined together for fairness, consistency and simplicity across the PCP spectrum, with the central goal of encouraging the successes that have been the hallmark of the PCP industry.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Celpage supports various Commission proposals as put forth in the replacement of Part 90 with Part 88 of the Rules, including the reserve of wideband paging-only frequencies, proposed EUO provisions and the consolidation of services, but requests that PCP be made a separate category in the Rules, and that the Commission take other actions to encourage and protect PCP operations in a manner consistent with the comments made herein.

Respectfully submitted,
CELPAGE, INC.

By: _____

Frederick M. Joyce
Jill M. Lyon
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: May 28, 1993

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CERTIFICATE OF SERVICE

I, Dennean Myers-Ferrell, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 28th day of May, 1993, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

Acting Chairman James H. Quello*
Federal Communications Comm.
Washington, DC 20554

Commissioner Andrew C. Barrett*
Federal Communications Comm.
Washington, DC 20554

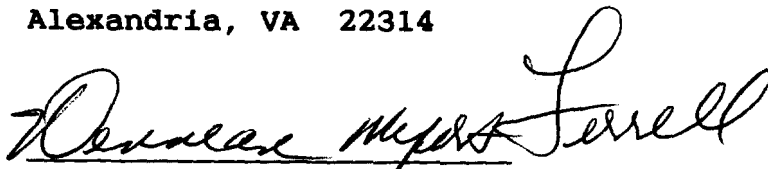
Commissioner Ervin S. Duggan*
Federal Communications Comm.
Washington, DC 20554

Ralph Haller, Chief *
Private Radio Bureau
Federal Communications Comm.
2025 M Street, NW, Room 5002
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Federal Communications Comm.
Route 116
Gettysburg, PA 17326

Jay Kitchen, President
NABER
1501 Duke Street
Alexandria, VA 22314

John Sherlock, V.P.
NABER
1501 Duke Street
Alexandria, VA 22314


Dennean Myers-Ferrell

* Hand Delivery